

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 JOHANES ODIN SKYWALKER TROYE,
9
10 Plaintiff,
11 v.
12 FEDERAL GOVERNMENT, *et al.*,
13 Defendants.
14

Case No. 3:17-cv-00292-MMD-WGC
**REPORT & RECOMMENDATION OF
U.S. MAGISTRATE JUDGE**

15 This Report and Recommendation is made to the Honorable Miranda M. Du, United
16 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to
17 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

18 Before the court is Plaintiff's Application to Proceed in Forma Pauperis (IFP)
19 (ECF No. 1) and pro se Complaint (ECF No. 1-1).

20 **I. IFP APPLICATION**

21 A person may be granted permission to proceed IFP if the person "submits an affidavit
22 that includes a statement of all assets such [person] possesses [and] that the person is unable to
23 pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense
24 or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1);
25 *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915
26 applies to all actions filed IFP, not just prisoner actions).

27 In addition, the Local Rules of Practice for the District of Nevada provide: "Any person
28 who is unable to prepay the fees in a civil case may apply to the court for authority to proceed
[IFP]. The application must be made on the form provided by the court and must include a
financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

1 pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotation marks
2 and citation omitted).

3 A complaint must contain more than a “formulaic recitation of the elements of a cause of
4 action,” it must contain factual allegations sufficient to “raise a right to relief above the
5 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading
6 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]
7 a legally cognizable right of action.” *Id.* (quoting 5 C. Wright & A. Miller, *Federal Practice &*
8 *Procedure* § 1216, at 235-36 (3d ed. 2004)). At a minimum, a plaintiff should state “enough facts
9 to state a claim to relief that is plausible on its face.” *Id.* at 570; *see also Ashcroft v. Iqbal*,
10 556 U.S. 662, 678 (2009).

11 A dismissal should not be without leave to amend unless it is clear from the face of the
12 complaint that the action is frivolous and could not be amended to state a federal claim, or the
13 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
14 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

15 **B. Plaintiff’s Complaint**

16 Plaintiff brings this action against the federal government and California, Nevada and
17 New Mexico. (ECF No. 1-1 at 1.) He asserts a single cause of action asserting that his country
18 (Indian country) was stolen “by the cavalry” that murdered “mohekin” Indians. (*Id.*) He filed
19 another document that states he is suing the federal government for murdering millions of
20 innocent Indians and taking away Indian country. (ECF No. 1-2 at 1.) Among other things, he
21 states that he is the “last Mohekin, Banshee Indian.” (*Id.* at 2.)

22 Plaintiff’s action should be dismissed for failure to state a claim upon which relief may
23 be granted, and as frivolous, for several reasons. First, the court takes notice that this is not the
24 first action Plaintiff has filed that has been dismissed as such. In case 3:17-cv-00079, Plaintiff
25 sued Joe Conforte (Conforte was the owner of Nevada’s first legal brothel, the Mustang Ranch).
26 That complaint, like this one, was difficult to read and decipher. The court’s analysis in that case
applies equally here.

///

1 Next, the Plaintiff sues the federal government and states for serious atrocities that, while
2 bearing some vague semblance to historical events, do not contain a plausible basis in fact. For
3 instance, Plaintiff repeatedly calls himself the last “Mohekin,” a title which resembles that of a
4 popular film. Not only are the allegations fanciful and implausible, they state no cognizable
5 claim for relief under § 1983.

6 As the Supreme Court has noted, “a litigant whose filing fees and court costs are assumed
7 by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing
8 frivolous, malicious, or repetitive lawsuits.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). “To
9 prevent such abusive or captious litigation, § 1915(d) [now § 1915(e)(2)(B)(i)] authorizes federal
10 courts to dismiss a claim filed [IFP] ‘if the allegation of poverty is untrue, or if satisfied that the
11 action is frivolous or malicious.’” *Id.* “Dismissals on these grounds are often made *sua sponte*
12 prior to the issuance of process, so as to spare prospective defendants the inconvenience and
13 expense of answering such complaints.” *Id.* (citation omitted). A complaint is frivolous “where it
14 lacks an arguable basis either in law or in fact.” *Id.* This term “embraces not only the inarguable
15 legal conclusion, but also the fanciful factual allegation.” *Id.*

16 § 1915(e)(2)(B)(i) “accords judges not only the authority to dismiss a claim based on an
17 indisputably meritless legal theory, but also the unusual power to pierce the veil of the
18 complaint’s factual allegations and dismiss those claims whose factual contentions are clearly
19 baseless.” *Id.* at 327. This includes “claims of infringement of a legal interest which clearly does
20 not exist” and “claims describing fantastic and delusional scenarios.” *Id.* at 327-28.

21 To the extent the court can decipher the complaint, it lacks an arguable basis in law or
22 fact. Therefore, it should be dismissed with prejudice as failing to state a claim and as frivolous.

23 ///

24 ///

25 ///

26 ///

 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

III. RECOMMENDATION

IT IS HEREBY RECOMMENDED that the District Judge enter an order as follows:

- (1) **GRANTING** Plaintiff's IFP application (ECF No. 1);
- (2) Directing the Clerk to **FILE** the Complaint (ECF No. 1-1); and
- (3) **DISMISSING** the Complaint **WITH PREJUDICE**.

Plaintiff should be aware of the following:

1. That she may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to this Report and Recommendation within fourteen days of receipt. These objections should be titled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the district judge.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court.

DATED: June 29, 2017.



WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE